

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 05-0021P**

**Income tax**

**For the Calendar Year 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

**STATEMENT OF FACTS**

The late penalty was assessed on the late payment of the income tax return for the calendar year 2002.

The taxpayer is a company residing outside of Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the penalty be abated as the error was unintentional, and, the taxpayer did not have the figures available at the time of the due date.

The taxpayer has over 150 reporting units. This plus the fact that the revenue for Indiana had increased 300% created a situation where the taxpayer did not have the information available to pay the tax at the due date.

The Department points out the taxpayer could have paid an estimate at the due date and then request a refund when the income tax return was filed.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer’s penalty protest is denied.